

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3338 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

DILIP M PATEL

Versus

STATE OF GUJARAT

Appearance:

MR BA VAISHNAV for Petitioner
Mr.V.M.Pancholi appears for M/S PATEL
ADVOCATES for Respondent No. 1, 2

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 01/02/2000

CAV JUDGEMENT

Learned Advocate Shri B.A.Vaishnav appears on behalf of the petitioner and Learned AGP Shri M.A.Pancholi is appearing on behalf of the respondents.

By this writ petition, the petitioner has sought

for quashing the order dated 29.4.86 passed by the respondent no.2 and to grant the pay scale of Rs.650/- to Rs.1040/- given to the degree holder in Mechanical Engineering from the date of his having obtained degree in Mechanical Engineering with arrears of salary and interest 12% p.a. According to the case of the petitioner, the petitioner was appointed through direct selection as an Asst. Lecturer in Mechanical Engineering vide an appointment letter dated 15.2.1983. The petitioner had joined his duties on 24.2.83 pursuant to said appointment letter which is at Annexure A. According to the terms of the appointment order, the petitioner was appointed in the pay scale of Rs.550 to Rs.900/on permanent basis as a direct recruit. Prior to this, the petitioner was working as a Draughtman (Mechanical) in the Government Technical High School, Gheekanta, Ahmedabad. At the time of filing the petition, the petitioner was working as Lecturer in Mechanical, R.C.Technical Institute, Saraspur, Ahmedabad. According to the petitioner, the petitioner had passed the degree examination during the course of employment with the permission of the Department in Mechanical Engineering on 2.3.85 and therefore according to the petitioner he is entitled to be placed in the higher grade of Rs.650 Rs.1040/- from the above date of passing degree examination in Mechanical Engineering on 2.3.1985. According to the petitioner, he had applied for the grant of this pay scale of Rs.650 - 1040/- for the first time through an application dated 11.9.1985 and thereafter he also sent a reminder on 7.12.1985. After considering his representation, the authorities were pleased to issue an order dated 1.4.1986 granting such a scale to the petitioner. Thereafter before implementing the said order dated 1.4.1986, the respondent no.2 has cancelled the order vide another office order dated 29th April, 1986. The Office order dated 29.4.86 produced on Page 20 (Annexure E) to the petition wherein it was mentioned that the petitioner was appointed against a post which was meant for certificate course only and therefore the petitioner is not entitled to the pay scale of Rs.650-1040 considering the degree course in Mechanical Engineering. Therefore the earlier order dated 1.4.1986 was cancelled by the respondent no.2. According to the petitioner, the said reason is not correct that he was appointed only for the purpose of certificate course and appointment letter does not stipulate that he was being appointed only for certificate course and therefore he is teaching diploma course since very beginning. Even at the time of filing the present petition, the petitioner had pointed out that the teaching work load of the petitioner consists of subjects which have been narrated

in Para 6 of the petition. Therefore according to the petitioner that there is no workload given to the petitioner from certificate course and in fact such course is not being taught in the R.C.Technical Institute since 1985 where the petitioner was working. The petitioner further pointed out that to illustrate one example in respect to one Mr.M.M.Patel who was appointed as Assistant Lecturer in Electrical Engineering for certificate course even though by this order dated 4.11.1982 wherein it was mentioned that Shri Patel was appointed specifically as a Assistant Lecturer in Certificate Course by way of direct recruitment to the post. Therefore the submission of the petitioner is that such terms are not stipulated in his appointment letter dated 15.2.83. The petitioner had made a representation to the department by writing letters dated 11.11.1986, 1.12.1986, 14.7.1987 and subsequently a legal notice by Advocate dated 22.1.1988 but there was no response from the respondents. Therefore the present petition has been filed by the petitioner before this Court. In the said petition Rule has been issued on 1.7.1988 returnable on 14.11.1988 and also notice to interim relief has been issued returnable on 24.7.1988. Thereafter the said petition was fixed for final hearing on 2.4.1991 by order dated 12.3.1991.

The said petition came up for final hearing before this Court on 16.9.1998. At that time this Court (Coram : Mr.Justice Kundan Singh) has passed an order considering the grievances of the petitioner in respect to the fact that inspite of the fact that the petitioner had made several representations to the authorities concerned against his claims and grievances but the representations made by the petitioner have not been decided by the Authority concerned. Therefore, considering these facts, this Court has directed the petitioner to submit a representation giving complete details alongwith a certified copy of this order dated 16.9.1998 within 2 weeks from that day and after receiving such representation it was directed to respondent no.1 to decide the said representation of the petitioner within a period of four weeks thereafter in accordance with law and it was also directed to list the said matter after six weeks. Direct Service was permitted.

After the order dated 16.9.98 passed by this Court, the petitioner had made a representation on 28.9.1998 to the respondent no.1 in detail. The said representation has been decided by the respondent no.1 on 23.12.1998 and considering the facts in detail and coming

to the conclusion that the pay-scale are different in respect to the diploma holder and degree holders working in the post of Asst. Lecturer and also considering the fact that initially the petitioner was appointed on the basis of having educational qualifications on diploma holder in the post of Asst. Lecturer in Certificate Course in Mechanical Engineering. Subsequently, having obtained the degree course in Mechanical Engineering, the petitioner is not entitled to a higher grade for the degree holders working in Asst. Lecturer post. Therefore the said representation has been rejected by the respondent no.1.

On behalf of the respondent authority one Joint Director of Technical Education - respondent no.2 has filed affidavit in reply on 17.12.1998 and copy was served to the advocate of the petitioner on the very same day i.e. on 17.12.1998 Thereafter, the petitioner had filed affidavit in rejoinder on 15.12.1999 before this Court.

On behalf of the petitioner, one Civil Application No. 14798/99 has been filed before this Court for amendment in the main petition for challenging the communication dated 23.12.1998 as Annexure H wherein the representation filed by the petitioner has been rejected by the respondent no.1. The said amendment filed by the petitioner as prayed in the above application is granted as the Learned AGP Mr.Pancholi have no objection for the same and accordingly, the said application for amendment has been disposed of with a direction that amendment is required to be carried out within a week from 17.12.1999. The said application for amendment was granted on 17.12.1999 by this Court.

The respondent no.2 has submitted the reply against the averments made in the petition and pointed out that R.C.Technical Institute, Ahmedabad is conducting 2 types of courses, one is diploma and another is certificate course. There were only 3 diploma courses i.e. Diploma in Textile Manufacturing, Diploma in Textile Chemistry and Diploma in Printing Technology. There were 3 certificate courses which were Mechanical Engineering, Electrical Engineering and Automobile Engineering. When the petitioner was appointed, 4 posts of Asst. Lecturer in Mechanical Engineering were vacant and out of these 4 posts 2 posts were on diploma side and 2 posts of certificate course side. These 2 posts of certificate side were brought from Sir Bhavsinghji Polytechnic Institute, Bhavnagar by Office order dated 25.10.1982 which was annexed to the reply. According to

the respondent by office order dated 16.10.82 sanctioned the post of Lecturer from Gandhi College of Engineering and Technology, Surat. To fill up the above 4 vacant posts, the Principal, R.C.Technial Institute, Ahmedabad had sent requisition to various agencies and also Circular amongst the Institutes of this Department to recommend the names of the candidates vide no. 5102/20/1082. It will be seen from the requisition that 2 posts were in the pay scale of Rs.650-1040 for degree holders and Rs.550-900 for diploma holders which is at Sr.No.1 and 2 respectively. The names recommended by various agencies were called for interview on 3.11.1982 and in that interview one Mr.B.A.Joshi, Mr.M.R.Jani, Mr.D.M.Patel and Mr.S.S.Chaudhary were selected. In the said selection Mr.B.A.Joshi and M.R.Jani stood first and second in the selection chronology and both were degree holders at the time of selection and therefore they were getting the pay scale of Rs.650-1040 and they were appointed on the diploma side but Mr.D.M.Patel and Mr.S.S.Chaudhary were third and fourth respectively in the selection chronology and both were diploma holders at the time of selection and therefore they were given pay scale of Rs.550-900 and they were appointed on the certificate side. The pay scale of the post of Asst. Lecturer in Mechanical Engineering on certificate side is Rs.550-900 only and it is shown at Sr.No.32 on Page 55 of the Book of Gujarat Civil Services (Revision of Pay) Rules, 1975 which was subsequently revised to the pay scale of Rs.1640-2900 only and this revision is shown at Sr.No.22 at Page No.38 of the Book of Gujarat Civil Services (Revision of Pay) Rules, 1987. In view of the above facts, according to the respondent, the petitioner was given appropriate pay scale of Rs.550-900 in Gujarat Civil Services (Revision of Pay) Rules, 1975 and pay scale of Rs.1640-2900 in Gujarat Civil Services (Revision of Pay) Rules, 1987. According to the respondent, the petitioner is not entitled to pay scale of Rs.650-1040 at the time of initial appointment as he was holding diploma certificate and enhancement of educational qualification after his joining his service is personal for the petitioner as during the time of appointment Mr.Patel was holding qualification in diploma and on that basis he was selected and even in selection he stood third in position and first 2 were appointed on diploma side and other 2 posts were appointed on certificate side since they were holding diploma and have also stood 3rd and 4th position in the interview respectively. It was further contended by the respondent in the reply that generally all the staff members are granted permission for further study in any faculty if they want to enhance and improve their knowledge and qualification but this would not become

obligatory on the part of the department to give pay scale according to the qualification. The same can be given only to the requisite qualifications attached to the post. The respondents further pointed out in reply that office order dated 1.4.1986 was issued by mistake and therefore it was required to be cancelled and hence it was rightly cancelled and it was cancelled due to administrative ground and not as a matter of punishment. Therefore there was no necessity to give any reasonable opportunity or show-cause notice to the petitioner. it was further contended by the department that the petitioner was appointed as Asst. Lecturer in Mechanical Engineering for this course and now there is no certificate course at R.C.Technical Institute and therefore he is given the work of diploma course so that it may become advantageous for him for becoming Asst. Lecturer in Mechanical Engineering on diploma side in future. If the petitioner was not given diploma course workload the respondents have no other way except to terminate the services of the petitioner and under these circumstances, the contentions of the respondent is that the petitioner is not selected on the diploma side and therefore he is not entitled to the pay scale of Rs.650 1040 being the legal right or vested right under the law and under the rules.

The petitioner had filed the rejoinder against the said reply of the respondent and pointed out that pay scale is not only attached to the post but also does vary with the qualifications of the incumbent holding the post and there was no valid or genuine reason to deny the said pay scale to the petitioner. The petitioner further pointed out that the petitioner is carrying out the activities of teaching diploma holders which facts have been admitted by the respondent in the reply. Alongwith the rejoinder, the petitioner had produced certain office order dated 18.6.1976, 26.5.86 and 31.12.86 and others are dated 1.9.1992 and 27.7.1995 and 2.1.1978.

I have heard the Learned Advocates appearing on behalf of the petitioner and respondents. The main controversy is which remains undisputed that at the time of the initial appointment of the petitioner, the petitioner was having requisite qualification of diploma holder and appointed in the post of Asstt. Lecturer in Mechanical Engineering on the certificate course side. The said facts have not been disputed by the petitioner and it remains unchallenged. The question therefore required to be considered is whether during the course of employment subsequently the petitioner has obtained the degree in Mechanical Engineering entitled him to a higher

grade of Rs.650-1040/- ? According to the averments made in the reply and in order dated 23.12.1998 that according to the revision of pay scales, the post of Asstt.Lecturers having diploma in Mechanical Engineering in a course of certificate side is entitled to pay scale of Rs.550-900. The said scale has been mentioned in the rules of 1987 are attached to the requisite qualifications of having diploma holders and in other side if employee is having degree course in Engineering and appointed in the post of Asstt. Lecturers on diploma side. The pay scale has been fixed under the rules of 1987 of Rs.650-1040. Therefore, merely the petitioner who obtained a degree in Mechanical Engineering on 2.3.1985 during the course of employment cannot have a legal right to receive the grade of Rs.650-1040/-. The petitioner have no legal right as well as a vested right under the Gujarat Civil Services (Revision of Pay Scales) 1975 and in Gujarat Civil Services (Revision of Pay Scales) 1987. Therefore the petitioner is not entitled to the grade of Rs.650-1040/- and respondent has rightly cancelled the office order dated 1.4.1986 by office order dated 29.4.1986 as it was a mistake due to administrative reasons committed by the respondent which has been rightly corrected before implementing the same in favour of the petitioner. It is settled law that if the department by error granted some benefits in favour of someone and after realising the said mistake or error and immediately the said error or mistake has been corrected then in such circumstances, it is not necessary to give any reasonable opportunity or required to observe principles of natural justice. Because in that circumstances, it is the duty of the petitioner to point out on merits that the petitioner is entitled as a legal or vested right to the pay scale of Rs.650-1040 on the basis of some statutory rules or resolution or some legal source. In the present case, the petitioner is not able to point out any such base for receiving a scale of Rs.650-1040 and according to the respondent's averments made in the reply in Para 10 Page 35 hat this order dated 1.4.86 was issued by mistake and therefore it was required to be cancelled and same was rightly cancelled and cancellation of order granting the pay scale of Rs.650-1040 was due to administrative grounds and not as a matter of punishment.

In light of above facts, the decision of the Apex Court in State of Punjab Vs. Jagdipsingh and Others, reported in AIR 1964 S.C. Page 521, is required to be considered. Wherein it was held that, where a government servant has no right to a post or to a particular status, though an Authority under the Government acting beyond

its competence had purported to give that person a status which it was not entitled to give, he will not in law be deemed to have been validly appointed to the post or given the particular status.

Similarly, in another decision of the Apex Court in the case of State of Madhya Pradesh and Others Vs. Maheskumar & Other etc. reported in 1997 (2) C.L.R. P-8, the Court has held that, it is true that, if any vested right created in favour of person the same cannot be deprived of or denied without affording to him an opportunity of hearing on the Principle of violation of Audi, alteram, partem. But, when obviously on realising the mistake committed by the Department had withdrawn the relaxation granted earlier cannot be considered to be violation of principles of natural justice.

It is pertinent to note that the order dated 29.4.86 which has been challenged by the petitioner on the ground that it is against the principles of natural justice and hit by Article 14 of the Constitution of India, it is now not necessary to challenge the very same order on the said ground because subsequently, this court by order dated 16.9.1998 directed the respondents to decide the representation of the petitioner and by that way a reasonable opportunity was given to the petitioner and respondent no.1 has decided the representation on merits and rejected the same by order dated 23.12.98. Therefore, reasonable opportunity against the cancellation of earlier office order dated 1.4.86 is now subsequently availed by the petitioner in pursuance to the order passed by this Court on 16.9.1998. Therefore the opportunity was given & availed by the petitioner and petitioner is not able to satisfy that how the order dated 23.12.98 is illegal and contrary to law. Therefore, considering this fact even though if the department was to correct the bonafide mistake then in such circumstances, obviously the principles of natural justice is not required to be observed but in the present case considering the subsequent order of this Court, this question now does not require much importance.

After considering the averments made in the petition as well as in the reply and rejoinder and also the necessary documents on the record, I am of the view that the order dated 29.4.1986 passed by the respondent no.2 cancelling the earlier order dated 1.4.1986 is legal and valid and it is not hit by Article 14 and also it is not against the principles of natural justice & I also held that looking to the undisputed facts from both the sides, the petitioner is not entitled to pay scale of

Rs.650-1040 from the date of having a degree course in Mechanical Engineering on 2.3.1985. The petitioner has failed to prove the legal and vested right under the rules to receive the pay scale of Rs.650-1040 as at the time of appointment of the petitioner in the post of Asstt. Lecturer on the side of certificate course. At that time the petitioner was having a requisite qualification of diploma holder and on that basis the petitioner was appointed in the post of Asstt. Lecturer in Mechanical Engineer of certificate side and by subsequently obtaining the degree in Mechanical Engineering itself, the petitioner is not entitled to pay scale of Rs.650-1040 as a matter of legal ad vested right under the rules and therefore the present petition is required to be dismissed as there is no merits in the petition. Similarly, by way of draft amendment, the petitioner has challenged the office order dated 23.12.1998 wherein the representation has been rejected by the respondent no.1. After considering the said decision passed on the representation of the petitioner, I am of the view that the respondent no.1 has rightly rejected the said representation as petitioner is not entitled to pay scale of Rs.650-1040 and respondent no.1 has given detailed reasons in support of its conclusions. Therefore, the decision dated 23.12.1998 is also legal and valid.

In view of the above observations, the present petition is required to be dismissed. Rule is discharged. Considering the facts and circumstances of the case, there is no orders as to costs.

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